



Paper No. 10

WYETH
PATENT LAW DEPARTMENT
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OFFICE OF PETITIONS

In re Application of
Chu et al.
Application No. 10/039,383
Filed: January 8, 2002
Attorney Docket No. AM100249

ON PETITION

This decision concerns the May 13, 2003 petition under 37 CFR 1.10(d), which is being properly treated as a petition under 37 CFR 1.10(c).

The petition is **DISMISSED**.

The petition requests a filing date of December 17, 2001, rather than the presently accorded filing date of January 8, 2002, alleging that the application was deposited on December 17, 2001 in the U.S. Postal Service (USPS) "Express Mail Post Office to Addressee" ("Express Mail") service pursuant to the requirements of 37 CFR 1.10.

Under 37 CFR 1.10(c), any person filing correspondence that was received by the PTO and delivered by the "Express Mail" service may petition the Commissioner if there is a discrepancy between the filing date accorded by the PTO to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. However, such a petition must include, *inter alia*, a true copy of the "Express Mail" mailing label indicating the "date-in" or other official notation by the USPS relied upon to show the date of deposit.¹ The instant petition lacks such a copy of "Express Mail" mailing label.

Moreover, while the application transmittal bears an "Express Mail" mailing label number EL783017014 US and contains a December 17, 2001 Certificate of Mailing by "Express Mail", such a Certificate of Mailing in accordance with 37 CFR 1.10, without more, merely indicates an intent to deposit the application papers in the USPS "Express Mail" service on that day.


In view of the above, the petition is dismissed.

No petition fee is owed. The \$130 charged to Deposit Account No. 01-1300 has been reversed.

Finally, the associate power of attorney enclosed with the petition has been entered and made of record.

The application is being returned to Technology Center 1600 to await a response to the January 7, 2003 non-final Office action.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.


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Petitions Attorney
Office of Petitions